IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 276 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KATHADABHAI KIDYABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 276 of 2003
THROUGH JAIL for Petitioner No. 1
Mr. N.D. Gohil, APP for Respondent No. 1
..... for Respondent No. 2-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/03/2003

ORAL JUDGEMENT

Rule. Learned APP Mr. N.D.Gohil appearing for

the respondents has waived service of rule on behalf of the respondents.

Present petition has been filed by the petitioner prisoner through jail wherein the petitioner prisoner KATHADABHAI KIDYABHAI has submitted that an application was made by him to the Superintendent, Central Prison, Baroda and request was made to release him on parole leave for a period of thirty days for house repairing. His application dated 18th November, 2003 has been rejected by the Additional District Magistrate Baroda by order dated 30.1.2003. Said order dated 30.1.2003 passed by the Additional District Magistrate, Baroda has been challenged by the petitioner prisoner through jail on the ground that the said order has been passed by the Additional District Magistrtate, Baroda only after taking into consideration the police opinion and the statements which were obtained by the police authority and without taking into consideration the jail record of the petitioner. Against the said order, the petitioner has submitted the present application before this court alleging that the Additional District Magistrate, Baroda has passed the said order wrongly by relying only on the adverse police opinion and without considering the jail record of the petitioner. The petitioner has, therefore, prayed for quashing and setting aside the said order made by the Additional District Magistrate, Baroda and for granting him leave as prayed for in his application.

I have considered the order made by the Additional District Magistrate Baroda as well as the application made by the petitioner and the jail report placed by the respondents on the record of this petition. Looking to this jail report, the petitioner has not enjoyed any parole leave when he was in jail since more than nine years. On four occasions, he enjoyed furlough leave and on each occasion, he surrendered in time. No punishment has been imposed in jail by the concerned authority and looking to his jail report on the record of this petition, his conduct in jail has been found to be satisfactory. From the order passed by the Additional District Magistrate, Baroda, it is clear that he has not considered the jail report of the petitioner but has considered only police opinion and some statements adverse to the petitioner.

Rule 22 of the Prisons (Bombay Furlough and Parole) Rules, 1959 provides the manner in which applications for parole has to be dealt with. Rule 23 thereof provides for the enquiries that may be made on receipt of such an application. Rule 23 of the said

Rules provides that on receipt of an application for parole, the Competent Authority may make such enquiries as it considers necessary and pass such orders as it considers fit. It further provides that if Competent Authority considers that there is no objection to release the prisoner concerned on parole it shall make an order for his release on parole.

Therefore, in view of the provisions contained in Rule 22 and 23 of the said Rules, it was the duty of the Additional District Magistrate, Baroda to consider the police opinion as well as the jail record of the present petitioner. However, while rejecting his application, the Additional District Magistrate, Baroda has not considered the jail record of the petitioner which was satisfactory but has considered the police opinion alone which was adverse to the petitioner. It is also clear from the bare perusal of the order made by the Additional District Magistrate, Baroda that he has also not verified the genuineness or otherwise of the ground alleged by the petitioner for parole leave. For that, there is no finding given by the said authority. Therefore, in such circumstances, according to my opinion, the Additional District Magistrate has not applied his mind properly to the facts of the case and has not considered properly the material before passing order against the petitioner and, therefore, on that ground alone, the order dated 30.1.2003 passed by the Additional District Magistrate, Baroda is required to be quashed and set aside by directing the Additional District Magistrate, Baroda to reconsider the matter by giving fresh consideration to his application for parole leave without being influenced by the order earlier passed by him.

Therefore, in the result, this petition is allowed. The order dated 30th January, 2003 passed by the Additional District Magistrate, Baroda rejecting application for parole leave of the petitioner is hereby quashed and set aside. It is directed to the Additional District Magistrate, Baroda to reconsider the application of the petitioner dated 18th November, 2002 made by the petitioner prisoner after considering the police opinion as well as the jail record and genuineness of the ground submitted by the petitioner for parole leave and to pass appropriate order in accordance with law and the aforesaid Rules within fifteen days from the date of receipt of this order and to communicate his decision to the petitioner immediately thereafter. With these observations and directions, this petition is disposed of. Rule is made absolute in terms indicated hereinabove. Since the present petition has been

preferred by the petitioner through jail, office is directed to immediately communicate the respondent authorities about this order.

Dt.20.3.2003. (H.K. Rathod,J.)

Vyas